

### REMARKS/ARGUMENTS

Claims 1-51 were previously pending. As noted above, claims 1, 3, 5, 7, 12, 19, 23, 34, 39 and 47 have been amended to further clarify the claims, no claims have been canceled, and no claims have been added. Support for these amendments may be found throughout the Specification.<sup>1</sup> Thus, claims 1-51 remain pending.

Applicants respectfully request reconsideration of this application based on the following remarks.

#### *Claim Rejections – 35 USC § 112*

Claims 7-11 are rejected under 35 USC § 112, second paragraph as being indefinite for failing to particularly point out and distinctly claim the subject matter. Applicants have amended claim 7 in response to the rejection and thus the rejection is now moot. Therefore, Applicants respectfully request the rejection be withdrawn.

#### *Claim Rejections – 35 USC § 103*

Claims 1-7, 9-16, 18-20, 22-27, 29-36, 39-44 and 46-50 are rejected under 35 USC § 103(a) as being obvious over Gagnon et al. (European Patent Application No. 1 024 661 A2) in view of Wugofski (US Patent No. 6,990,680).

Claim 8 is rejected under 35 USC § 103(a) as being obvious over Gagnon in view of Wugofski and in further view of Birdwell et al. (US Patent No. 6,032,197).

Claims 17, 28 and 45 are rejected under 35 USC § 103(a) as being obvious over Gagnon in view of Wugofski and in further view of Rustad et al. (US Patent No. 6,775,303).

Claims 21, 37-38 and 51 are rejected under 35 USC § 103(a) as being obvious over Gagnon in view of Wugofski and in further view of Matsui et al. (US Patent No. 6,580,756).

Claims 1, 3, 5, 7, 12, 19, 23, 34, 39 and 47 are rejected under 35 USC § 103(a) as being obvious over Gagnon in view of Auld, Jr., et al. (US Patent No. 5,257,396).

Applicants respectfully traverse this rejection for at least the following reasons.

To establish a *prima facie* case of obviousness, all of the claimed features must be taught or suggested by the references and there must be some suggestion or motivation, in the references themselves or in the knowledge generally available to one of ordinary skill in the art,

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<sup>1</sup> See, e.g., Specification, paragraphs [0064] and [0082].

to modify the reference or to combine reference teachings. *See, e.g., KSR International Co., v. Teleflex Inc.*, No. 04-1350, (US, April 30, 2007).

Initially, independent claim 1 as amended, recites:

transmitting a broadcast session on a broadcast transmission channel, ***wherein the broadcast transmission channel is a physical channel***; and  
transmitting broadcast overhead information for the broadcast session in-band with the broadcast session on the broadcast transmission channel, wherein the broadcast overhead information provides information including physical layer formatting information for decoding the physical channel carrying the broadcast session to a receiver for processing the received broadcast session on the received broadcast channel, and ***wherein the physical layer formatting information includes a Walsh code for decoding the physical channel***. (Emphasis added).

In the Response to the Arguments, the Office Action asserts that Gagnon discloses the above claimed subject matter and cites, Gagnon, paragraphs [0084] and [0086], as support for this assertion. Specifically, the Office Action asserts, that claim 19 defines “physical layer formatting information” to include “a broadcast session protocol.” Further, the Office Action asserts that Gagnon discloses “SDP+ records ***including a protocol version of broadcast content***.” See, Office Action, dated July 14, 2010 (Emphasis added). Rather, the cited passage in paragraph [0084] of Gagnon discloses that “details regarding the standard SDP protocol may be found in RFC 2327. The standard fields of the SDP protocol that are used in the [sic] of the SDP+ protocol include, protocol version ...”

Contrary to the assertions in the Office Action, the above cited reference neither discloses nor suggests the subject matter as recited in independent claims 1 or 19. RFC 2327 states, with reference to protocol version, that “the ‘v=’ field gives the version of the Session Description Protocol.” In other words, the cited passage discloses that the SDP+ protocol includes a definition of which protocol version of the SDP is being used, and not a protocol version of the broadcast content, as asserted in the Office Action. As such, the assertion in the Office Action that Gagnon discloses “SDP+ records ***including a protocol version of broadcast content***” is incorrect and not factually supported. Therefore, Gagnon neither discloses nor suggests “physical layer formatting information” as recited in the independent claims.

Further, in the Response to the Arguments, the Office Action concedes that Gagnon does not expressly disclose the use of a physical channel. In an attempt to remedy this deficiency, the Office Action asserts that “it is well known in the art of communication that a physical channel

must be employed in order to transfer data. Without a physical channel, there is no medium for data to be transferred via.” See, Office Action, dated July 14, 2010, page 40. Applicants respectfully disagree with the Office Action assertions.

The assertions in the Office Action indicate confusion between a physical media through which a signal may travel (e.g., air), and a physical channel as recited in the claimed subject matter. As used herein, a physical channel refers to a data channel supported on a physical layer, where the physical layer is the lowest layer in a hierarchical system communication model. As noted in the specification, and as included in the amended independent claims, the physical layer may include a given Walsh code to differentiate different physical channels. See, Specification, Paragraph [0064]. Further, the Specification at paragraph [0072], states that “the average overhead for all layers between RTP and the physical layer is approximately 64, 8-bit bytes per packet plus 8 bits per F-SCH frame overhead used by the MUXPDU header.” Such a description provides a further example of how the physical layer, as recited in the claimed subject matter, is defined with respect to other layers as used in a hierarchical system communication model, which is different from the physical media referenced by the Office Action.

Further, modification of Gagnon by the addition of teachings that disclose use of a physical layer would render Gagnon inoperable, as the communication system disclosed in Gagnon requires use of Direct-to-Home (DTH) satellite communications systems that use Ku-band satellites. Use of a DTH satellite communications system is not capable with use of a cellular system implementing various data communication layers as described with respect to the claimed subject matter. As such, the assertions in the Office Action neither disclose nor suggest the claimed subject matter.

As a corollary, any modification of Gagnon based on the teachings of Wugofski, Birdwell, Rustad, Matsui, and/or Auld fails to disclose or suggest the recited subject matter.

Additionally, Wugofski, Birdwell, Rustad, Matsui, and/or Auld are silent with respect to remedying this deficiency. As such Gagnon in view of any combination of Wugofski, Birdwell, Rustad, Matsui or Auld fails to disclose or suggest the claimed subject matter.

Independent claims 3, 5, 7, 12, 19, 23, 24, 34, 39 and 47 recite similar subject matter and are allowable for at least the same reasons as discussed above. Further, claims 2, 4, 6, 8-11, 13-18, 20-22, 25-33, 35-38, 40-46 and 48-51 depend either directly or indirectly from independent claims 1, 3, 5, 7, 12, 19, 23, 24, 34, 39 and 47 and are also allowed for at least the same reasons

as discussed above.

Therefore, based on the foregoing, Applicants respectfully request the rejections under 35 USC § 103(a) be withdrawn for claims 1-51.

### CONCLUSION

In light of these remarks, Applicants submit that the application is in condition for allowance, for which early action is requested.

Please charge any fees or overpayments that may be due with this response to Deposit Account No. 17-0026.

Respectfully submitted,

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